Davis v. *Patrick,* 141 U. S. 489. By the weight of authority, however, a stockholder has not such an interest in a corporation that his promise to answer for its debts is an original one and not within the Statute of Frauds. *Turner* v. *Lyles,* 68 S. C. 392, 48 S. E. 301; *Harburg India Rubber Co.* v. *Martin* [1902] 1 K. B. 778; *Walther* v. *Merril,* 6 Mo. App. 370. The contrary to the principal case was held in *Home Nat. Bank* v. *Waterman,* 134 Ill. 161.

TORT—WHAT CONSTITUTES CONVERSION.—A liveryman let a horse to an infant to go to a certain place. He drove beyond and the horse died before it was returned, although not because of the extra driving. *Held,* that the defendant was not guilty of conversion. *Daugherty* v. *Reveal* (Ind. 1913) 102 N. E. 381.

The decision is a departure from the old rule that any intentional deviation from the agreed route or driving beyond the place specified in the contract works a conversion. *Woodman* v. *Hubbard,* 25 N. H. 67, 57 Am. Dec. 310; *Wentworth* v. *McDuffie,* 48 N. H. 402; *Homer* v. *Thwing,* 3 Pick. 492; *Perham* v. *Coney,* 117 Mass, 102, and *Fish* v. *Ferris,* 5 Duer. 49. The decision in the principal case was not placed upon the ground that defendant was a minor, and if it was *Freeman* v. *Boland,* 14 R. I. 39, 51 Am. Rep. 340; and *Churchill* v. *White,* 58 Neb. 22, 76 Am. St. Rep. 64 hold that the same rule applies to minors as to adults. In harmony with the principal case and perhaps representing the current of modern decisions are *Doolittle* v. *Shaw,* 92 Iowa 348, 26 L. R. A. 366; *Young* v. *Muhling,* 48 App. Div. 617, 63 N. Y. Supp. 181; *Harvey* v. *Epes,* 16 Grattan 76. It was held in *Penrose* v. *Cunen,* 3 Rawle 351, 24 Am. St. Rep. 356 that an infant was not liable for conversion although the horse died from the cruel excessive driving.

WILLS—CONSTRUCTION.—Testator devised land to his wife to hold during her life, and at her death to pass to his daughter for her life and after her death to become vested in her children in fee simple, and, in default of children, then in such persons as she might direct, and providing that *in no event should the fee simple of the land be vested in his wife or daughter. Held,* applying the rule of Shelley's Case the daughter took a fee simple estate, the subsequent provision being ineffective to prevent the operation of such rule, though the testator otherwise intended. *Lauer* v. *Hoffman* (Pa. 1913), 88 Atl. 496.

"The purpose in construing a will is to ascertain the intention of the testator so that it may be carried out in the disposition which he has made of his property. Technical rules of construction should only be resorted to and applied in the interpretation of wills when found to be necessary in determining the meaning of the instrument so as to effectuate the purpose of the testator. If the language employed by him in disposing of his estate is plain and clearly discloses his intention, the will interprets itself, and hence no rules of construction are necessary to aid in its interpretation." *Wood* v. *Schoen,* 216 Pa. 425. "All mere technical rules of construction must give way to the plainly expressed intention of a testator, if that intention is lawful. It is a rule of common sense as well as law not to attempt to construe that

which needs no construction." *Reck's Appeal,* 78 Pa. 432. The intent of the testator is to be deduced from the language of the will taken as a whole. The inquiry is not necessarily limited to a consideration of the particular devises but includes the whole instrument." *Miller's Appeal,* 113 Pa. 459. For similar decisions see: *Vandiver* v. *Vandiver,* 115 Ala. 328; *Gregory* v. *Welch,* 90 Ark. 152; *In re Hite,* 155 Cal. 436; *Russell* v. *Hartley,* 83 Conn. 654; *Wagner* v. *Wagner,* 244 Ill. 101, 18 Ann. Cas. 490; *Fenstermaker* v. *Holman,* 158 Ind. 71, 62 N. E. 699; *Mohn* v. *Mohn,* 148 Ia. 288; *Bradshaw* v. *Williams,* 140 Ky. 160, 130 S. W. 985; *Lydon* v. *Campbell,* 204 Mass. 580, 134 Am. St. Rep. 702; *Hardenbergh* v. *Ray,* 151 U. S. 112; and cases cited in note following *Grace* v. *Perry,* 7 Ann. Cas. 949. The decision in the principal case violates the rule laid down in these cases. It also violates the corollary rule that an estate of inheritance of real estate may be reduced to a lesser estate if the subsequent language of the instrument unequivocally shows that such was the intention of the testator. *Sheets Estate,* 52 Pa. 257; *Snyder's Appeal,* 95 Pa. 174; *Good* v. *Fichthorn,* 144 Pa. 287, 22 Atl. 1032; *Shower's Estate,* 211 Pa. 297; and cases cited in the note following *McIsaac* v. *Beaton,* 3 Ann. Cas. 612. In view of these cases it is evident that the decision is contrary to authority in the state where it was rendered, contrary to the general weight of authority, and contrary to a doctrine which is founded in sound reason and common sense. It is conceded that the rule of Shelley's Case, a rule springing from the incidents of feudal tenure, is a rule of law—a rule of property. *Trumbull* v. *Trumbull,* 149 Mass. 200. And it is true that among earlier decisions it has been held that it is not competent for the testator to prevent the legal consequences of its application by any declaration, no matter how plain, of a contrary intention. *Doebler's Appeal,* 64 Pa. 9. It is also true that the doctrine upheld by such decisions is as vicious as it is antiquated.

WILLS—MENTAL CAPACITY.—In a will contest the court instructed the jury that the law requires a testator to be of sound and disposing mind and memory, and that by soundness is meant that the mind should be in such *vigor and power* and its faculties be in such working order that testator comprehends the nature and effect of his will. *Held,* the instruction was misleading as causing the jury to believe that a more active mind was required to execute a will than the law contemplates. *Brainard* v. *Brainard,* (Ill. 1913), 103 N. E. 45.

This case falls under what is probably the most difficult and uncertain subject in the whole range of the law of wills, and it is interesting because it adds one more to an innumerable list of cases which are almost as unlike as they are numerous. There is no formula in which judges are bound to charge upon the degree of mental capacity requisite to make a will. *Lawrence* v. *Steele,* 66 N. C. 584. The test of capacity now generally adopted requires that the testator have strength and clearness of mind and memory sufficient to know in general, without prompting, the nature and extent of the property of which he is about to dispose, the nature of the act which he is about to perform, and the names and identity of the persons who are the proper objects of his bounty, and his relation towards them. *Converse* v. *Converse,*